

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgio	Team: Squad #04	CCRB Case #: 202106546	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/27/2021 5:30 PM, Wednesday, 10/27/2021 10:50 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 4/27/2023	Precinct: 94		
Date/Time CV Reported Thu, 10/28/2021 12:52 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 10/28/2021 12:52 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Michael Magas	04605	950797	094 DET
2. DT3 Steve Laumonier	05760	930541	094 DET
3. PO Jerry Eustache	14290	956628	094 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Joseph Ray	26819	969313	094 PCT
2. PO Spencer Wolf	31975	968889	094 PCT

Officer(s)	Allegation	Investigator Recommendation
A . DT3 Michael Magas	Abuse: Detective Michael Magas damaged § 87(2)(b) property.	§ 87(2)(b)
B . DT3 Steve Laumonier	Abuse: Detective Steve Laumonier damaged § 87(2)(b) property.	§ 87(2)(b)
C . PO Jerry Eustache	Abuse: Police Officer Jerry Eustache damaged § 87(2)(b) property.	§ 87(2)(b)
D . DT3 Michael Magas	Abuse: Detective Michael Magas entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
E . DT3 Steve Laumonier	Abuse: Detective Steve Laumonier entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
F . PO Jerry Eustache	Abuse: Police Officer Jerry Eustache entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
G . DT3 Michael Magas	Abuse: Detective Michael Magas searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
H . DT3 Steve Laumonier	Abuse: Detective Steve Laumonier searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
I . PO Jerry Eustache	Abuse: Police Officer Jerry Eustache searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
J . DT3 Michael Magas	Discourtesy: Detective Michael Magas spoke discourteously to § 87(2)(b)	§ 87(2)(b)
K . DT3 Steve Laumonier	Abuse: Detective Steve Laumonier drew his gun.	§ 87(2)(b)
L . DT3 Steve Laumonier	Discourtesy: Detective Steve Laumonier spoke discourteously to § 87(2)(b)	§ 87(2)(b)
M . DT3 Michael Magas	Abuse: Detective Michael Magas threatened to arrest § 87(2)(b)	§ 87(2)(b)
N . DT3 Michael Magas	Abuse: Detective Michael Magas seized § 87(2)(b) property.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
O . DT3 Michael Magas	Abuse: Detective Michael Magas failed to provide § 87(2)(b) with a business card.	
P . DT3 Steve Laumonier	Abuse: Detective Steve Laumonier failed to provide § 87(2)(b) with a business card.	
Q . PO Jerry Eustache	Abuse: Police Officer Jerry Eustache failed to provide § 87(2)(b) with a business card.	
R . DT3 Michael Magas	Abuse: Detective Michael Magas entered § 87(2)(b) in Brooklyn.	
S . PO Jerry Eustache	Abuse: Police Officer Jerry Eustache entered § 87(2)(b) in Brooklyn.	

Case Summary

On October 28, 2021, § 87(2)(b) filed this complaint online via the CCRB website.

On October 27, 2021, at approximately 5:30 PM, § 87(2)(b) was at § 87(2)(b) in Brooklyn. Detective Michael Magas, Detective Steve Laumonier, and Police Officer Jerry Eustache, all of the 94th Precinct Detective Squad, came to the door. The officers banged or kicked the door, causing the peep hole to “drop” (**Allegation A: Abuse of Authority – Property Damaged – § 87(2)(g)**) (**Allegation B: Abuse of Authority – Property Damaged – § 87(2)(g)**) (**Allegation C: Abuse of Authority – Property Damaged – § 87(2)(g)**) § 87(2)(b) opened the door, and after a brief conversation, the officers entered (**Allegation D: Abuse of Authority – Entry of Premises – § 87(2)(g)**) (**Allegation E: Abuse of Authority – Entry of Premises – § 87(2)(g)**) (**Allegation F: Abuse of Authority – Entry of Premises – § 87(2)(g)**) The officers then searched the apartment (**Allegation G: Abuse of Authority – Search of Premises – § 87(2)(g)**) (**Allegation H: Abuse of Authority – Search of Premises – § 87(2)(g)**) (**Allegation I: Abuse of Authority – Search of Premises – § 87(2)(g)**) Detective Magas allegedly told § 87(2)(b) “You’re being stupid” and “You’re being dumb,” and possibly also, “You’re acting dumb” (**Allegation J: Discourtesy – Word – § 87(2)(g)**) Detective Laumonier allegedly drew his gun and said to § 87(2)(b) “Stop fucking around. Where’s Darnell? You know where he is,” and that she knew “where the fuck” § 87(2)(b) was, as well as telling her something like, “Oh shit, I’m scared for my life,” when she asked him why he drew his gun (**Allegation K: Abuse of Authority – Gun Drawn – § 87(2)(g)**) (**Allegation L: Discourtesy – Word – § 87(2)(g)**) Detective Magas allegedly threatened to arrest § 87(2)(b) (**Allegation M: Abuse of Authority – Threat of Arrest – § 87(2)(g)**) The officers and § 87(2)(b) left the apartment, and Detective Magas took the keys that § 87(2)(b) had to the apartment and gave them to building management (**Allegation N: Abuse of Authority – Seizure of Property – § 87(2)(g)**) All three of the officers failed to provide § 87(2)(b) with RTKA cards (**Allegation O: Abuse of Authority – Failure to Provide RTKA Card – § 87(2)(g)**) (**Allegation P: Abuse of Authority – Failure to Provide RTKA Card – § 87(2)(g)**) (**Allegation Q: Abuse of Authority – Failure to Provide RTKA Card – § 87(2)(g)**) Later in the evening, Detective Magas and Police Officer Eustache returned to the apartment, entered with the assistance of building management, and retrieved the dogs (**Allegation R: Abuse of Authority – Entry of Premises – § 87(2)(g)**) (**Allegation S: Abuse of Authority – Entry of Premises – § 87(2)(g)**)

No arrests or summonses resulted from this incident.

No body-worn camera (BWC) footage exists for the officers’ first appearance to the apartment, as the officers were not assigned cameras at the time. BWC from Detective Magas and PO Eustache’s second trip to the apartment is captured by the BWCs of two uniformed officers from the 94th Precinct, Police Officer Joseph Ray and Police Officer Spencer Wolf, who were present for the removal of the dogs. This footage is linked to Board Review 01-02 and summarized in Board Review 03.

Findings and Recommendations

Allegation (A) Abuse of Authority: Detective Michael Magas damaged § 87(2)(b) property.

Allegation (C) Abuse of Authority: Police Officer Jerry Eustache damaged § 87(2)(b) property.

§ 87(2)(b) was interviewed by CCRB via telephone on November 9, 2021 (Board Review 05). PO Eustache was interviewed by CCRB on April 13, 2022 (Board Review 06). Detective Magas was

interviewed by CCRB on September 23, 2022 (Board Review 07). § 87(2)(g)

§ 87(2)(b) testified that she believed that the officers were repeatedly kicking the door before she opened it and that she was afraid that they would kick it down. The officers broke the peephole by kicking the door repeatedly and causing it to “drop,” though § 87(2)(b) was still able to see that there were officers in the hallway.

PO Eustache was not aware of officers banging on or kicking the door, damaging some piece of the peephole.

Detective Magas was not aware of any excessive force being used on the door and was not aware of any damage caused to the door by officers knocking on it. He was not aware of any officers kicking the door to announce their presence.

As noted above, the officers involved in this part of the incident were not assigned body-worn cameras at this time.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Detective Steve Laumonier damaged § 87(2)(b) property.

Allegation (E) Abuse of Authority: Detective Steve Laumonier entered § 87(2)(b) in Brooklyn.

Allegation (H) Abuse of Authority: Detective Steve Laumonier searched § 87(2)(b) in Brooklyn.

Allegation (K) Abuse of Authority: Detective Steve Laumonier drew his gun.

Allegation (L) Discourtesy: Detective Steve Laumonier spoke discourteously to § 87(2)(b)

Allegation (P) Abuse of Authority: Detective Steve Laumonier failed to provide § 87(2)(b) with a business card.

§ 87(2)(g)

Allegation (D) Abuse of Authority: Detective Michael Magas entered § 87(2)(b) in Brooklyn.

Allegation (F) Abuse of Authority: Police Officer Jerry Eustache entered § 87(2)(b) in Brooklyn.

Allegation (G) Abuse of Authority: Detective Michael Magas searched § 87(2)(b) in Brooklyn.

Allegation (I) Abuse of Authority: Police Officer Jerry Eustache searched § 87(2)(b) in Brooklyn.

It is undisputed that Detective Magas, Detective Laumonier, and PO Eustache entered and searched § 87(2)(b) in Brooklyn. Officers had an I-card for § 87(2)(b) indicating that there was probable cause to arrest him but had no warrant (Board Review 04). Officers did not generate a consent to search form (Board Review 09).

§ 87(2)(b) testified that she was inside her ex-boyfriend's, § 87(2)(b) apartment with § 87(2)(b) two small dogs when officers came to the door. § 87(2)(b) opened the door and Detective Magas asked what she was doing there and who lived there. § 87(2)(b) asked whom the officers were looking for. Detective Magas said they were looking for § 87(2)(b) and asked § 87(2)(b) who she was and whether § 87(2)(b) was present. § 87(2)(b) said that no one was there except for her and the dogs and that she did not know where § 87(2)(b) was. Detective Magas said that § 87(2)(b) was lying and continued to ask her who she was, what she was doing there, and how she got into the house. § 87(2)(b) said that she used to live there but had left and then came back. Detective Magas called § 87(2)(b) name and asked § 87(2)(b) if he could "take a peek." § 87(2)(b) asked the officers if they had a warrant, and Detective Magas said that they did not need a warrant. § 87(2)(b) told Detective Magas something like "Just a peek," or "You can take a peek and call his name, because he's not here." She did not say that all of the officers could enter, or even that they could come in. She expected Detective Magas to "take a peek" from near the door and call § 87(2)(b) name from there. § 87(2)(b) moved to one side to allow Detective Magas in near the bathroom and told him that he could check the bathroom, as it was right there and the door was open, and that the bedroom door was open, too. All three officers entered. Detective Magas said that he would "take a peek in the room," and "looked around," including walking and looking into the bathroom, closet, bedroom, and living room. § 87(2)(b) did not believe that she had given Detective Magas permission to walk around the apartment and felt that he had tricked her. There were clothes around and Detective Magas "was going through" things but § 87(2)(b) did not specify further. Detective Magas asked § 87(2)(b) again where § 87(2)(b) was, and § 87(2)(b) said that she did not know, as they had broken up a few days previously. § 87(2)(b) told the officers that she had just come down from Pennsylvania and was there to pick up a check. Detective Laumonier looked around the house, including entering the bedroom and "going through" things as Detective Magas had done. Detective Laumonier did not ask for permission to do so. Eventually, § 87(2)(b) told the officers that she had let them take their "peek" and asked if they could ask any further questions outside the apartment in the hallway. PO Eustache blocked the door and held it, preventing § 87(2)(b) from exiting. § 87(2)(b) told the officers that she did not have the authority to let them into the apartment, since she did not live there at the time and her name was not on the lease. Eventually, § 87(2)(b) and the officers left the apartment.

PO Eustache testified that he did not receive any information from the mother of § 87(2)(b) child (the complainant in the case he was investigating) about any other individual besides § 87(2)(b) and his child who lived at the location. PO Eustache did not identify any warrants for individuals who resided at the incident location. PO Eustache said that, if given permission, he would enter a location looking for someone with an I-card. PO Eustache had no specific information that led him to believe that § 87(2)(b) was in the apartment at the time of the incident aside from the officers' knowledge that § 87(2)(b) resided there. PO Eustache had no reason to believe that an additional individual lived inside the apartment. He did not speak to a superintendent or anyone in building management before going to the apartment for the first time. Officers knocked on the door and identified themselves as detectives from the 94th Precinct. § 87(2)(b) (who was unknown to officers at the time) opened the door. PO Eustache did not see anyone else inside the apartment. Multiple officers spoke to § 87(2)(b) and asked her who she was, and § 87(2)(b) did not respond. The officers asked § 87(2)(b) who lived in the apartment and how she knew who lived there, and § 87(2)(b) said, "I don't know." Officers asked § 87(2)(b) who had given her the keys and § 87(2)(b) said, "Someone gave them to me," but she did not know who "someone" was. § 87(2)(b) was "collecting items from the apartment," but the officers did not believe or know that § 87(2)(b) lived in the apartment. § 87(2)(b) was "evasive," and "not answering any questions." Other than § 87(2)(b) "evasiveness" about the ownership of the apartment and that she did not identify how she had keys to the apartment, PO Eustache had no other reason to believe that § 87(2)(b) did not reside in the apartment or was in the apartment unlawfully. PO Eustache testified both that he did not recall

whether § 87(2)(b) told him that she lived in the apartment before she told the officers that they could come in, and also that before officers entered the apartment, § 87(2)(b) never told the officers about her having lived in the apartment at any point. PO Eustache did not recall whether he observed anything or received any information that led him to believe that § 87(2)(b) lived in the apartment before she gave the officers permission to enter the apartment. PO Eustache had no indication of criminality on § 87(2)(b) part, but at some point, officers believed that § 87(2)(b) may have been the perpetrator of a crime or may have been committing a crime by being in the apartment. PO Eustache did not know at what point they made it clear to § 87(2)(b) that she could be under suspicion of a crime or arrested for committing a crime.

The officers told § 87(2)(b) that they were looking for § 87(2)(b) but § 87(2)(b) said that she did not know whom the officers were talking about. The officers (PO Eustache did not recall which) asked for permission to look through the apartment for § 87(2)(b) § 87(2)(b) “allowed” them in. PO Eustache did not know the exact words she used but it was something like “Okay, you can come in,” or “You can come in.” PO Eustache either did not inform or did not recall whether § 87(2)(b) was informed that it was a voluntary choice and that she could have chosen not to allow the officers inside. PO Eustache did not recall § 87(2)(b) making any statements about which officers could enter or how much the officers could come into the apartment. One of the officers looked in the bedroom of the apartment, and officers looked “around the bedroom” and “any place visible that a human could hide.” Officers did not look anywhere that would not fit a human and were not looking for any property. The purpose of the search was solely to find § 87(2)(b).

Detective Magas’s testimony was generally consistent with PO Eustache’s testimony, with the following exceptions noted below. § 87(2)(b) responses prompted suspicion that there may be a crime going on. However, Detective Magas did not recall whether he believed that there was any kind of emergency situation happening inside the apartment before the officers entered. Officers did not need § 87(2)(b) consent to enter, as § 87(2)(b) told the officers that she did not live there and was “basically admitting to committing a crime,” in this case, “burglary, or at minimum, trespassing.” Aside from burglary and trespassing, there was no other crime or violation that Detective Magas suspected § 87(2)(b) of committing. Officers (he did not recall which) informed § 87(2)(b) at the door that she was potentially committing a crime. Detective Magas did not recall if he intended to arrest § 87(2)(b) never mentioned having previously lived at the location before letting officers in. She “eventually” said that she used the location as a mailing address or had mail there. Detective Magas did not recall if officers had entered the apartment by that point.

The officers “eventually” informed § 87(2)(b) that they were there for § 87(2)(b) and were not there for § 87(2)(b) confirmed that § 87(2)(b) lived there. “Later on in questioning her,” the officers found out that § 87(2)(b) had been in a relationship with § 87(2)(b) Detective Magas did not recall word-for-word how the conversation went when § 87(2)(b) allowed the officers in. Somebody specifically asked to enter the apartment, but Detective Magas did not know how this was phrased or who asked. The officers “basically” said they just wanted to see if § 87(2)(b) was there, and that if he was not there, then they were “done.” § 87(2)(b) “said ‘Okay,’ and let [the officers] in, freely.” Detective Magas did not know if § 87(2)(b) was informed that she could say no. Once officers entered the apartment, Detective Magas “stayed pretty much right inside” the doors. He stayed in the kitchen area and did not recall where Detective Laumonier or PO Eustache went in the apartment. Detective Magas “looked around” at what he could see from where he was in the combination kitchen/living room and saw that § 87(2)(b) was not there. He did not go in “fully” and did not recall going or looking into any additional rooms. His partners “were just looking generally,” and he did not observe them searching any part of the apartment. It was determined that § 87(2)(b) was not present at the apartment. § 87(2)(b) then asked them to leave. The officers and § 87(2)(b) left the apartment.

PO Eustache's memo book (Board Review 10) states that when the officers went to the location for their apprehension attempt, § 87(2)(b) answered the door. She stated that she did not live there and was not aware of who did live there. She produced keys for the apartment and stated that "someone" gave them to her, though she refused to say who had granted her access with the keys. "Upon further investigation, § 87(2)(b) granted access to the apartment." She "became increasingly uncooperative and refused to assist further." She then requested that they all leave the location, and her "request was granted." PO Eustache's memo book does not contain a signed statement by § 87(2)(b) consenting to the entry.

Detective Magas's memo book (Board Review 11) reflects essentially the same information as PO Eustache's. Detective Magas's memo book does not contain a signed statement by § 87(2)(b) consenting to the entry.

Payton v. New York, 445 US 573 (1979) states that absent exceptional circumstances, warrantless entries of a person's house for the purpose of arresting that person are unconstitutional (Board Review 12).

People v. Russo, 243 A.D.2d 658 (1997) states that where a person with ostensible authority consents to police presence on the premises, either explicitly or tacitly, the right to be secure against warrantless arrests in private premises as expressed in Payton is not violated (Board Review 13).

Despite the officers' statements that they believed that § 87(2)(b) was committing a crime by being in the apartment, § 87(2)(g) a reasonable officer, upon encountering a civilian who is inside an apartment, with keys to the apartment and belongings in the apartment, would expect that the civilian lives in that apartment and has authority there. It is illogical, on the other hand, to believe that a person would be given keys to an apartment by a stranger with no authority over that apartment and told to go there, and that police by chance managed to interrupt that person while seeking someone else at the apartment. § 87(2)(b) apparent "evasiveness" about the ownership of the apartment and the fact that she did not explain how she had keys to the apartment do not, § 87(2)(g)

Additionally, it was undisputed that officers entered the apartment for the sole purpose of apprehending § 87(2)(b) and not to investigate § 87(2)(b) § 87(2)(g)

New York City Administrative Code §14-173 instructs officers to obtain voluntary, knowing, and intelligent consent prior to searching a person's home, for a search that is based solely on a person's consent to such search, when the search is not conducted pursuant to a warrant, any other exception to the warrant requirement under applicable law, or probable cause, or when such search is not incident to lawful arrest. Officers are to use plain and simple language delivered in a non-threatening manner to articulate that the person who is the subject of the search is being asked to consent to the search voluntarily, knowingly, and intelligently, and that if the person refuses to provide consent to the search, the search will not be conducted. Officers must also affirm that the person understands the information communicated to them, refrain from conducting a search where consent has not been obtained, and must document the consent by video audio, video and audio, or in writing by allowing the person to sign a statement confirming their consent (Board Review 14).

As noted above, the investigation did not credit that officers believed that § 87(2)(b) was in § 87(2)(b) apartment unlawfully. § 87(2)(g)

While it is undisputed that § 87(2)(b) said something to the officers that appeared to allow them into the apartment, § 87(2)(b) testimony indicates that she did not fully understand what she was consenting to or how much she was allowing officers to do. § 87(2)(g)

Further, based on the testimony of § 87(2)(b) and the officers, it was determined that § 87(2)(b) was not told that she could decline to allow officers into the apartment, indicating that her consent was also not voluntarily given. Additionally, her consent was not documented in the officers' memo books or in a consent to search form (Board Review 10-11, 09). Officers entered solely to search for § 87(2)(b) and proceeded to conduct this search, which requires officers to comply with Administrative Code §14-173. § 87(2)(g)

Allegation (J) Discourtesy: Detective Michael Magas spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that Detective Magas told her, "You're being stupid," and "You're being dumb," as well as possibly, "You're acting dumb." She alleged that he called her "stupid" approximately three times.

Detective Magas and PO Eustache did not recall § 87(2)(b) being told at any point that she was "being stupid," Or saying to § 87(2)(b) "You're being stupid," or "You're being dumb," Or "acting dumb."

As noted above, there was no body-worn camera video that captured of this part of the incident.

§ 87(2)(g)

Allegation (M) Abuse of Authority: Detective Michael Magas threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that the officers asked her to whom the dogs belonged. § 87(2)(b) said that the dogs lived in the apartment, so whomever they were looking for was the owner of the dogs. Detective Laumonier said that § 87(2)(b) was abandoning the dogs and that she did not feed them. Detective Magas asked § 87(2)(b) if she had ever been "locked up," and said that if § 87(2)(b) did not tell him where § 87(2)(b) was, he would charge her with abandonment of the dogs that were in the apartment. He also pointed out a bag of luggage that § 87(2)(b) was taking with her and said that he would charge § 87(2)(b) with burglary. The bag in question was § 87(2)(b) clothing that she had brought from Pennsylvania. She told the officers that the bag was hers.

Detective Magas testified that the officers (he did not recall which) informed § 87(2)(b) that she was potentially committing a crime. Detective Magas did not recall if he intended to arrest § 87(2)(b) when they entered the apartment. Detective Magas did not remember if § 87(2)(b) was ever specifically told that she could be arrested. Detective Magas stated that it was possible for an officer to arrest § 87(2)(b) and added, "I guess at the onset, when she disclosed that she doesn't live there and doesn't know how she got in there." The officers used their discretion to not arrest § 87(2)(b). Detective Magas could not speak to whether any additional investigative steps were taken to clarify whether § 87(2)(b) lived in the apartment or was trespassing because this would be for the case detective to address. Detective Magas did not recall taking any additional investigative steps to

see if § 87(2)(b) lived at the location. Detective Magas did not recall if he told § 87(2)(b) that she could be arrested for burglary. Detective Magas did not recall there being any conversation with § 87(2)(b) about her having abandoned the dogs. He did not recall if he believed that § 87(2)(b) had a role in abandoning the dogs. Detective Magas did not recall observing any other officers telling § 87(2)(b) that she had abandoned the dogs.

PO Eustache testified that an officer or officers “in general” may have told § 87(2)(b) that if they could not verify that she resided at the apartment, or who had given her access to the apartment so that they could contact that person to confirm that § 87(2)(b) had access, that § 87(2)(b) could have been arrested. PO Eustache did not recall which officer told § 87(2)(b) this. If § 87(2)(b) had no right to be at the apartment, she would have been trespassing, but PO Eustache did not recall if he specifically told § 87(2)(b) that she could be arrested for trespassing. § 87(2)(b) was also told that she could have been arrested for burglary. There was nothing else that § 87(2)(b) was subject to arrest for. PO Eustache did not recall if the topic of § 87(2)(b) being arrested for abandoning the dogs was ever discussed with § 87(2)(b). He did not recall having a conversation with § 87(2)(b) about the dogs and did not recall if any officer had a conversation with § 87(2)(b) about the custody of the dogs. PO Eustache did not know if he had any reason to believe that § 87(2)(b) had any ownership over or responsibility to the dogs, as he had been unable to confirm whether she lived in the apartment.

New York State Penal Law §140.05 defines trespass as occurring when a person knowingly enters or remains unlawfully in or upon premises. Trespass is a violation (Board Review 24).

New York State Penal Law § 140.20 defines burglary in the third degree as occurring when a person is knowingly enters or remains unlawfully in a building with intent to commit a crime therein (Board Review 25).

As noted above in the discussion of **Allegations D, F, G, and I**, the investigation did not credit that officers believed § 87(2)(b) was trespassing in the apartment, as a reasonable officer would expect that a person in a dwelling, who is in possession of keys to that dwelling and has belongings there, is not trespassing. Likewise, the investigation did not credit that officers believed that § 87(2)(b) was stealing belongings from the apartment, since § 87(2)(b) was allowed to leave with the belongings she had. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (N) Abuse of Authority: Detective Michael Magas seized § 87(2)(b) property. It is undisputed that the officers took § 87(2)(b) keys and gave them to building management, without providing § 87(2)(b) with a voucher or any other paperwork for the keys.

§ 87(2)(b) testified that Detective Magas asked § 87(2)(b) for her keys to the apartment. § 87(2)(b) initially refused, saying that they were hers. Detective Magas said that if § 87(2)(b) did not give him the keys, he would charge her with abandonment of the dogs and burglary. § 87(2)(b) then gave him the keys. The officers walked with § 87(2)(b) to building management, where Detective Magas gave management staff the key he had taken from § 87(2)(b). § 87(2)(b) did not know the management of the building, as she had only lived in the building for a couple of months before moving.

Detective Magas stated that he could not speak to whether any additional investigative steps were

taken to clarify whether § 87(2)(b) lived in the apartment or was trespassing, as this would be for the case detective. He did not recall taking any additional investigative steps to see if § 87(2)(b) lived at the location. § 87(2)(b) keys were taken from her, as she had told the officers that “someone on the street” gave her the keys and she did not know who. § 87(2)(b) did not tell the officers that the keys were her keys. “For the security of the apartment, and for whoever else lives there,” the officers told § 87(2)(b) that they would return the keys with her. § 87(2)(b) and the officers went to the building’s front desk, and the keys were given to the person there. The officers told the person at the desk something like that § 87(2)(b) said she did not live there but had the keys, so the officers wanted to return the keys to the building. The officers may have told building staff that they could secure the apartment and return the keys to the rightful owner. They may have alternately said that if the building staff wanted to return the keys to § 87(2)(b) they could do that. Detective Magas did not recall who made the decision to take § 87(2)(b) keys. Detective Magas did not recall § 87(2)(b) being given a voucher for her keys but noted that the keys were not vouchered but were “returned to the owner.” Detective Magas did not recall whether anyone who worked in the building was asked if § 87(2)(b) lived in the apartment.

PO Eustache provided a similar statement to Detective Magas with the following exceptions. PO Eustache did not recall which officer(s) took the keys from § 87(2)(b). PO Eustache did not recall if § 87(2)(b) ever said or indicated that she lived in the apartment. The officers did not have a “complainant” in the matter of § 87(2)(b) possession of the keys, as the complainant would be § 87(2)(b) whom the officers were seeking. PO Eustache did not recall the officers asking the doorman if he knew § 87(2)(b).

Both officers’ memo books state that after § 87(2)(b) requested that everyone leave the location, her request was granted. The officers, in the presence of § 87(2)(b) made the front desk aware of “the issue,” and returned the apartment keys so that they could be returned to “the proper leasee.”

In an email response to a request for a Consent to Search form (Board Review 09), Sergeant Andre Rosa of the 94th Precinct Detective Squad wrote that § 87(2)(b) initially told officers that she did not live in the apartment or know who lived there. She stated that she “got the keys from an unknown person for her entry,” and “did not wish to disclose who gave her the apartment keys” but was at the apartment to pick up a mailed check. While attempting to look for § 87(2)(b) in the apartment, the officers continued asking § 87(2)(b) how she knew him, if she knew his whereabouts, and how she gained entry into the apartment. § 87(2)(b) stated that she did not know where § 87(2)(b) was and that the keys that she used to get in belonged to her, as she was previously involved in a relationship with § 87(2)(b). § 87(2)(b) then asked the officers to leave. The officers secured the apartment and left with § 87(2)(b). The officers returned the keys to the apartment to the front desk for safeguarding.

The Fourth Amendment protects against unreasonable searches and seizures.

Patrol Guide Procedure 208-03 instructs officers to remove certain property from arrested persons (Board Review 19).

Patrol Guide Procedure 214-13 instructs that the role of a uniformed member of the service when called to the scene of an eviction or other civil process situation is to preserve the peace and prevent the commission of a crime. A city marshal/sheriff is responsible for other parts of the process (Board Review 19).

§ 87(2)(b) was not under arrest during this incident. As noted above, the investigation did not credit that officers believed § 87(2)(b) was trespassing in the apartment or had received keys from a

stranger who granted her access to the apartment unlawfully. Officers' seizure of § 87(2)(b) keys prevented her from having access to an apartment she previously had access to, effectively evicting § 87(2)(b) and inserting officers into what would otherwise be a civil matter between building management and § 87(2)(b) if management objected to § 87(2)(b) having access to the apartment. Under Patrol Guide Procedure 214-13, officers are not permitted to take part in evictions or other similar civil process situations other than to preserve the peace (which was not an issue here) or to prevent commission of a crime, which as noted, the investigation did not believe was a concern in this case. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (O) Abuse of Authority: Detective Michael Magas failed to provide § 87(2)(b) with a business card.

Allegation (Q) Abuse of Authority: Police Officer Jerry Eustache failed to provide § 87(2)(b) with a business card.

As noted above, it is undisputed that officers searched the apartment at § 87(2)(b) in Brooklyn while § 87(2)(b) was there.

§ 87(2)(b) testified that she asked for the officers' names, as she wanted to file a report against them. The officers gave § 87(2)(b) their names, and then § 87(2)(b) left. § 87(2)(b) did not receive a business card from any officer during the incident.

PO Eustache did not recall which officer gave § 87(2)(b) a business card but noted that § 87(2)(b) was able to contact the command to look for the officers. PO Eustache did not recall whether he personally gave § 87(2)(b) a business card. He did not recall if he witnessed any other officers giving § 87(2)(b) a business card. § 87(2)(b) had the officers' contact information, but PO Eustache did not know how she obtained this information. He did not recall whether any identifying information for the officers was given to § 87(2)(b) at any point, though § 87(2)(b) was able to call the 94th Precinct Detective Squad. PO Eustache believed that officers would have been required to provide § 87(2)(b) with a business card in this instance.

Detective Magas did not recall if § 87(2)(b) was given a business card at any point. He did not recall specifically whether he gave her a business card. § 87(2)(b) later called Detective Magas's command looking for him specifically, which Detective Magas believed showed that § 87(2)(b) knew who he was. Detective Magas was "fairly certain [he] gave her something," since § 87(2)(b) knew his name and office number. He said that he would "like to think that" he gave her a business card or wrote it down for her or something but did not recall. He could not speak to whether any other officers gave § 87(2)(b) a business card. He did not recall observing the other officers give a business card to § 87(2)(b).

New York City Administrative Code §14-174 and Patrol Guide Procedure 203-09 instruct officers to offer Right To Know Act business cards to civilians at the conclusion of law enforcement activities that include a home search, except in cases when a summons is issued or an arrest made, or when exigent circumstances are present (Board Review 15, 16).

Given that § 87(2)(b) consent was sought for officers to search § 87(2)(b) apartment, the officers were required by NYC Administrative Code §14-174 to provide business cards to her. § 87(2)(g)

§ 87(2)(g)

Allegation (R) Abuse of Authority: Detective Michael Magas entered § 87(2)(b)

in Brooklyn.

Allegation (S) Abuse of Authority: Police Officer Jerry Eustache entered § 87(2)(b)

in Brooklyn.

§ 87(2)(b) did not mention officers re-entering the apartment after she had left. It is otherwise undisputed that Detective Magas and PO Eustache returned to § 87(2)(b) at approximately 10:50 PM on October 27, 2021, and that, with the aid of building management, and accompanied by PO Ray and PO Wolf, they were granted access to the apartment to retrieve two dogs that were inside. It is further undisputed that when officers had previously been in the apartment, there was a notable presence of dog feces and urine on the floor, and that officers believed that the dogs had been left with no access to food or water.

Both PO Eustache and Detective Magas testified that they decided to return to the apartment and retrieve the dogs because, based on their prior observations, the dogs were abandoned. PO Eustache stated that if § 87(2)(b) was trying to evade the police, there was a possibility that the dogs in the apartment would be there for an unknown amount of time with no food or water, running out of space to urinate. Detective Magas added that the two dogs had no food or water “for however long,” the apartment was “in disarray,” there was urine and feces “all over the place,” and § 87(2)(b) had been clearly packing and leaving. Detective Magas, PO Eustache, and two uniformed officers returned to the building. The building manager gave access to the apartment after the officers explained that the dogs appeared to be abandoned. There was no change in the condition of the apartment between when the officers went in the afternoon and when they returned for the dogs in the evening. The dogs were retrieved and safeguarded at the stationhouse until they could be returned.

BWC video captured by both PO Ray (Board Review 01) and PO Wolf (Board Review 02) corroborates PO Eustache and Detective Magas’s accounts, including documenting that there was dog waste on the floor in numerous spots. At timestamp 1:08 in PO Ray’s BWC, Detective Magas knocks on the door to the apartment and announces their presence before opening the door slightly and calling, “Hello?” The dogs bark through the door. At timestamp 1:25, the two small dogs are seen through the open doorway, and the officers try to coax the dogs out without entering. The dogs retreat further in, and feces is seen on the apartment floor. Detective Magas opens the door slightly wider and points out the feces. The dogs do not come to the officers and remain inside the apartment barking and growling. At timestamp 2:09, Detective Magas tells PO Wolf that he can go in and that they are just taking the dogs. He again points out the feces on the floor. Detective Magas tells PO Wolf to ensure that no one is there and says that there should not be anyone there, as the apartment is abandoned. At timestamp 2:20, Detective Magas points out urine on the floor, which PO Ray acknowledges. Detective Magas asks, “There’s no food or water though, right? The bowl’s empty over there?” There are two bowls visible on the ground which appear to be empty, and PO Wolf states that the bowls are “pretty much” empty. As the video continues, the first dog is retrieved, and the officers look for the second dog, which turns out to be hiding in a pile of clothes. At timestamp 3:13, something that may be dog feces is again visible on the ground. At timestamp 5:27, PO Ray picks up the second dog and then leaves the bedroom, and the officers and building staff leave the apartment. The officers go downstairs in the elevator and leave the building.

People v. Molnar, 98 NY2d 328 (2002) states that the emergency exception to the warrant requirement may be invoked where the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property (Board Review 21).

People v. Rogers, 184 Misc. 2d 419 (2000) states that a warrantless search may be conducted under the emergency doctrine where there is a substantial threat of imminent danger to either life, health, or property. The emergency doctrine arises where the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, the search is not primarily motivated by intent to arrest and seize evidence and there is some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. The protection of property encompassed in the doctrine includes the protection of animals (Board Review 20).

Based on the BWC footage captured by PO Ray and PO Wolf, the investigation credited that officers observed signs that the dogs in the apartment were abandoned without food, water, or care when they first entered the apartment in the presence of § 87(2)(b) § 87(2)(g) officers accessed the apartment for approximately five minutes when they returned for the dogs, and that the only police actions captured appear to be the retrieval of the abandoned dogs, § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 23).
- Detective Magas has been a member of service for 11 years and has been a subject in two additional CCRB complaints and three additional allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Eustache has been a member of service for eight years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- Due to an Agency moratorium on Mediations, this case could not be mediated.
- As of April 13, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (Board Review 22).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 4

Investigator:	<u>Rachel Murgio</u> Signature	<u>SI Rachel Murgio</u> Print Title & Name	<u>01/20/2023</u> Date
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Squad Leader:	<u>Raquel Velasquez</u> Signature	<u>IM Raquel Velasquez</u> Print Title & Name	<u>01/20/2023</u> Date
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Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
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